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DIVISION OF COMMUNICATIONS

July 17, 2002

Ms. Marlene Dortch, Secretary
Office of the Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE, Suite 110
Washington, D. C. 20002

RE: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers
CC Docket No. 01-338

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996
CC Docket No. 96-98

Deployment of Wireline Services Offering Advanced Telecommunications Capability
CC Docket No. 98-147

Dear Ms. Dortch:

Enclosed please find reply comments of the Virginia State Corporation Commission Staff in the above referenced case.

Very truly yours,

William Irby

William Irby

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147

REPLY COMMENTS OF THE VIRGINIA STATE CORPORATION COMMISSION STAFF

Introduction

The Division of Communications of the Virginia State Corporation Commission ("VSCC Staff") respectfully submits these Reply Comments in response to the Notice of Proposed Rulemaking ("NPRM") released December 20, 2001, in CC Docket Nos. 01-338, 96-98, and 98-147 and the extension order released May 30, 2002.

General Comments

The VSCC Staff generally supports the comments of the National Association of Regulatory Utility Commissioners ("NARUC") and other state commissions. In particular, we share their view regarding the states' ability to better assess local market conditions. The Federal Communications Commission ("FCC"), therefore, should not prevent a state commission from imposing additional obligations as necessary to meet

state-specific conditions on incumbent local exchange carriers ("ILECs") as provided for pursuant to Section 251(d) (3) of the Telecommunications Act of 1996 ("Act").

In addition, the VSCC Staff is responding to the FCC's NPRM and various comments of interested parties on the issue of whether ILECs should be required to engage in activities necessary to activate high capacity loops.[1] The VSCC Staff has some recent experience analyzing the policy of Verizon Virginia Inc. ("Verizon") on this subject that may provide some valuable insight to the FCC in its evaluation. The discussion below highlights our experience.

Verizon's 271 Case – Unbundled Loops

On July 12, 2002, in Case No. PUC-2002-00046,[2] the Hearing Examiner issued a Report ("HE Report") regarding Verizon's compliance with the checklist requirements of § 271(c) of the Act. While the HE Report stated that Verizon complies with Checklist Item 4 (Unbundled Local Loops), it highlighted concerns regarding Verizon's "no construction" policy in provisioning high capacity loops and its adverse effect on competition in Virginia.

> From November 2001 through March 2002, Verizon Virginia confirmed orders for UNE DS-1s that if provisioned would have provided the equivalent capacity of 117,240 voice grade circuits. Cavalier calculates its UNE DS-1 rejection rate to be 39%. To put this level of activity in perspective, during the same five month-period, Verizon Virginia reported actual line growth for CLECs in Virginia to be 116,652. These calculations indicate that UNE DS-1 Loops are significant to competition in Virginia. Furthermore, Cavalier and Allegiance demonstrate that denied access to UNE DS-1s hurt their ability to compete as this increases both the time and cost to provide service.[3]

[1] See ¶ 52 of NPRM; see generally Verizon's comments.

[2] In the Matter of Verizon Virginia Inc. to Verify Compliance with the Conditions set forth in 47 U.S.C. § 271 (c).

[3] HE Report at page 116.

These quantities appear to indicate that the availability of UNE DS-1s is more important for a competitive market in Virginia than the FCC found for New Jersey and Pennsylvania.[4]

Verizon's HiCap No-Construction Policy

Verizon believes it has no obligation to construct facilities in provisioning services for CLECs where none currently exist or are available. Verizon's policy on high capacity loops is set out in Attachment A to these comments.[5] Verizon notified competitive local exchange carriers ("CLECs) of this policy in a letter sent out in mid-2001. This no-construction policy identifies six reasons for denying UNE DS-1 and DS-3 requests. These are as follows:

- No repeater shelf in central office, customer location or remote terminal
- No apparatus/doubler case
- Need to place fiber or muliplexer
- Need to turn up shelf on muliplexer
- No riser Cable or buried drop wire if a trench or conduit is not provided
- Copper cable defective, no spares available and would need to place new cable

[4] Application of Verizon New Jersey Inc. for Authorization to Provide In-Region, InterLATA Services in New Jersey, CC Docket 02-67, adopted June 24, 2002 at ¶151. Application of Verizon Pennsylvania Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania, CC Docket No. 01-138, dated adopted September 29, 2001 at ¶90.

[5] This document was introduced as a Staff exhibit in Case No. PUC-2002-00046 .

VSCC Staff Concerns

The VSCC Staff has concerns with Verizon's policy with respect to both the provisioning and the pricing of DS-1 UNEs to CLECs. We have been investigating this matter for some time in both formal and informal complaints from CLECs in Virginia. The HE Report notes that the VSCC had been investigating complaints raised by Broadslate Networks of Virginia, Inc. and 360 Communications Company of Charlottesville (d/b/a ALLTEL) in Cases Nos. PUC-2001-00166 and PUC-2001-00176.[6] Both of these cases, however, were subsequently withdrawn, but as the report points out, "it is significant that neither company operates as a CLEC in Virginia today."[7]

Rearrangements

We believe the application of Verizon's no-construction policy denies CLECs access to UNEs even when only a simple rearrangement of existing facilities is required. As an example, under this policy Verizon will not even splice an existing cable pair into an existing apparatus case in order to complete a CLEC order for a UNE DS-1. Additionally, Verizon further limits CLECs' access to UNEs by looking for unused facilities associated only with an end user's service terminal rather than those that could be made available through simple rearrangements or cross connects at other locations between a customer premises and its serving wire center.

A DS-1 generally will require line repeaters placed about every mile along its cable route in order to maintain the signal integrity. The line repeaters are housed in apparatus cases and cable pairs are either spliced into the case as needed to serve a

[6] There is also a pending case filed by Cavalier Telephone LLC in PUC-2002-00088.

[7] HE Report at page 116.

specific end user via an assigned service terminal, or are pre-assigned along a route with the splicing occurring at or near the end user's service terminal in order to access the needed cable pairs. Under Verizon's policy of not splicing existing pairs into existing apparatus cases or only extending the search for available pairs to a specific end user's service terminal, a CLEC's access to UNE DS-1 loops may be significantly impaired or routinely denied.

Furthermore, Verizon's refusal to perform rearrangements in provisioning UNE-DS-1 loops under its no-construction policy is in conflict with the FCC's Part 32 accounting rules. For example, under FCC rules, splicing an existing cable pair into an existing apparatus case, would be considered a maintenance expense and not a capital or construction expenditure.

Transmission Requirements

Outside plant cable facilities are versatile in their intended use, design and administration. A cable pair with properly attached equipment can be used to support many service applications (retail, access, broadband, or UNE) at many different customer locations along its route. The FCC properly recognized that some devices (such as bridged taps and load coils) must be removed in order to allow the transmission of certain DSL signals.[8] The VSCC Staff believes that the FCC should go a step further and specifically recognize that some equipment may be needed in order to maintain certain transmission standards for services other than DSL (such as DS-1) provided on short loops or long loops.

[8] 47 CFR 51.319(a)(3)(i).

TELRIC Pricing

The VSCC Staff believes that Verizon's no-construction policy for UNE DS-1s is also inconsistent with the FCC's TELRIC pricing methodology. The "LRI" in the TELRIC acronym stands for "long-run incremental," and these words describe the heart of the TELRIC costing and pricing process. In crafting the TELRIC methodology, the FCC adopted the definition of incremental costs as those that "are the additional costs … that a firm will incur as a result of expanding the output of a good or service by producing an additional quantity of the good or service."[9]

The FCC defined "long run" as "a period long enough that all costs are treated as variable and avoidable. This long run approach ensures that rates recover not only the operating costs that vary in the short run, but also fixed investment costs that, while not variable in the short term, are necessary inputs directly attributable to providing the element."[10] And in discussing the TELRIC methodology, the FCC prescribed that

> [c]osts must be attributed on a cost-causative basis. Costs are causally-related [sic] to the network element being provided if the costs are incurred as a direct result of providing the network elements, or can be avoided, in the long run, when the company ceases to provide them. Thus, for example, the forward-looking costs of capital (debt and equity) needed to support investments required to produce a given element shall be included in the forward-looking direct cost of that element.[11]

These definitions formed the basis of the methodology used by the VSCC to set prices still in use today for DS-1 (as well as other) UNEs. The capital costs of all UNEs

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[9] FCC's First Report and Order, CC Docket No. 96-98, released August 8, 1996 (the "Local Competition order"); para. 675. The FCC credited Alfred E. Kahn's *The Economics of Regulation* and William Baumol's and Gregory Sidak's *Toward Competition in Local Telephony 57* for this definition.

[10] Id., para. 692. The FCC credited Kahn, op.cit., for this definition.

[11] Id., para. 691

reflect growing demand forecasts used to incorporate inflation into the cost calculations and to comport with the forward-looking nature of the studies. This means that these prices assume a situation wherein CLEC demand for UNEs is included in the planning for UNE provisioning, and the orders for UNEs are filled with a "readiness to serve" policy. During the VSCC's PUC-1997-00005 pricing proceeding, Verizon (formerly Bell Atlantic) clearly stated its intention to carry out such a policy. In response to a Staff discovery request (Staff 35-3) related to DS-1 UNEs, Verizon stated as follows:

> For this assumption [to use a fill factor of 100%] to have any basis in reality would mean that BA-VA has no spare DS-1 loops, which it does; that every time a [UNE] customer requests service BA-VA must add facilities, which it doesn't; and that there are no SCC service standards, which there are. [12]

The VSCC agreed with Verizon and directed the use of an 85% fill factor to determine the cost of DS-1 UNE loops.[13] Verizon's DS-1 no-construction policy does not comport with the assumptions that went into the VSCC's determination of DS-1 UNE prices.

The diagram below depicts a potential outcome of Verizon's no-construction policy:

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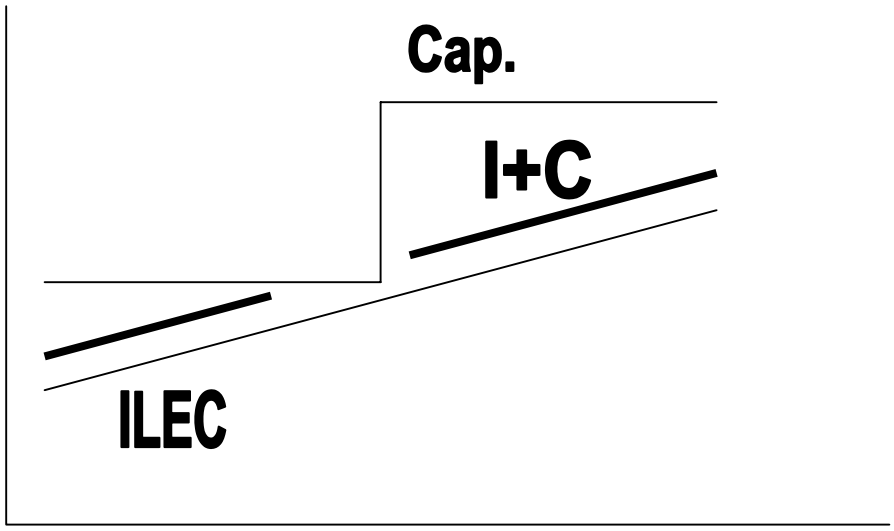
[12] Staff Confidential Appendices to Exhibit, Comparative Summary of Pricing Recommendations; Case No. PUC-1997-00005; June 5, 1997

[13] Final Order, Case No. PUC-1997-00005; April 15, 1999, Section D, at p.12



The stair-stepped line represents total capacity installed ("Cap."). The line labeled I+C represents total units in service, ILEC plus CLEC UNEs. The bottom line, labeled ILEC, represents ILEC retail units in service. The diagram shows that capacity is installed only when warranted by retail demand. The capacity steps up only when ILEC retail units get close enough to cause a capacity addition to be ready to serve the future demand.

The I+C line has a discontinuity. This shows that the CLEC demand simply has to wait until ILEC retail demand is such that a capacity addition will be made. The total cost of the capacity is represented, of course, by the "Cap." line (technically, a function of that line), and it is essential to recognize that total capacity costs are *not affected* by the CLEC UNEs. In other words, the CLEC UNE capacity costs are not avoidable and, therefore, no capacity cost causation can be attributed to the CLEC UNEs. If the "I+C" line were removed, the "Cap." line *would not change.* The ultimate effect of a "no-construction" policy, therefore, is that over time the facilities used to provide UNEs and retail services will operate at a higher fill factor than they would without that policy, and

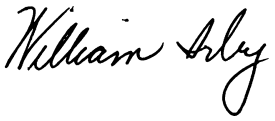
the timeliness of service provisioning will be degraded. A careful cost analysis might discover some costs attributable to this service degradation, but there is *no incremental capacity cost effect.* TELRIC prices apparently do not apply, therefore, to UNEs under a provisioning policy that does not include CLEC demand in the capacity planning and construction.

Under such a policy, the relevant cost of UNEs seems to be short-run incremental cost. This means that no capacity (capital) costs would be attributed to these UNEs; their prices must cover only the operating costs (such as ordering, provisioning, maintenance, and billing).

Conclusion

The VSCC Staff supports a continued requirement of access to all capacity levels for unbundled loops. In addition, the VSCC Staff believes that ILECs should be required to engage in activities necessary to activate UNE DS-1 loops. The current high capacity loop provisioning policy apparently is not consistent across ILECs and, therefore, the FCC should at least establish a minimum set of conditions under which such high capacity loops need to be provisioned on behalf of CLECs. This policy should recognize the (1) importance of high capacity loops to CLECs; (2) obligation of ILECs to rearrange existing facilities; (3) FCC's Part 32 accounting rules; (4) placement of necessary equipment on DS-1 loops; and (5) the FCC's TELRIC pricing methodology.

Respectfully submitted,
Virginia State Corporation Commission
Division of Communications



William Irby
Director

Dated July 17, 2002

Attachment A

(Confidential Portion To Be
Filed Separately Under Seal)

July 24, 2001

DS1 and DS3 Unbundled Network Elements Policy

A number of carriers have recently expressed concern that Verizon is changing its policies with respect to the construction of new DS1 and DS3 Unbundled Network Elements. This is not the case. To ensure that there is no misunderstanding on this point this letter restates Verizon's policies and practices with respect to the provisioning of unbundled DS1 and DS3 network elements.

In compliance with its obligations under applicable law, Verizon will provide unbundled DS1 and DS3 facilities (loops or IOF) to requesting CLECs where existing facilities are currently available. Conversely, Verizon is not obligated to construct new Unbundled Network Elements where such network facilities have not already been deployed for Verizon's use in providing service to its wholesale and retail customers. This policy, which is entirely consistent with Verizon's obligations under applicable law, is clearly stated in Verizon's relevant state tariffs and the CLEC Handbook, and is reflected in the language of Verizon's various interconnection agreements.

This does not mean that CLECs have no other options for obtaining requested facilities from Verizon.

In areas where Verizon has construction underway to meet anticipated future demand, Verizon's field engineers will provide a due date on CLEC orders for unbundled DS1 and DS3 network elements based on the estimated completion date of that pending job, even though no facilities are immediately available. Rigid adherence to existing policies could dictate that the field engineers reject these orders due to the lack of available facilities; but in an effort to provide a superior level of service, Verizon has chosen not to do so. In such cases, the result is that the order is filled, but the provisioning interval is longer than normal. At the same time, Verizon's wholesale customers should not confuse these discretionary efforts to provide a superior level of service with a perceived *obligation* to construct new facilities.

Moreover, although Verizon has no legal obligation to add DS1/DS3 electronics to available wire or fiber facilities to fill a CLEC order for an unbundled DS1/DS3 network element, Verizon's practice is to fill CLEC orders for unbundled DS1/DS3 network elements as long as the central office common equipment and equipment at end user's location necessary to create a DS1/DS3 facility can be accessed. However, Verizon will reject an order for an unbundled DS1/DS3 network element where (i) it does not have the common equipment in the central office, at the end user's location, or outside plant facility needed to provide a DS1/DS3 network element, or (ii) there is no available wire or fiber facility between the central office and the end user.

Specifically, when Verizon receives an order for an unbundled DS1/DS3 network element, Verizon's Engineering or facility assignment personnel will check to see if existing common equipment in the central office and at the end user's location has spare ports or slots. If there is capacity on this common equipment, operations personnel will perform the cross connection work between the common equipment

and the wire or fiber facility running to the end user and install the appropriate DS1/DS3 cards in the existing multiplexers. They will also correct conditions on an existing copper facility that could impact transmission characteristics. Although they will place a doubler into an existing apparatus case, they will not attach new apparatus cases to copper plant in order to condition the line for DS1 service. At the end user's end of the wire or fiber facility, Verizon will terminate the DS1/DS3 loop in the appropriate Network Interface Device (Smart Jack or Digital Cross Connect (DSX) Panel).

In addition, if Verizon responds to a CLEC request for an unbundled DS1/DS3 network element with a Firm Order Completion date (FOC), indicating that Verizon has spare facilities to complete the service request, and if Verizon subsequently finds that the proposed spare facilities are defective, Verizon will perform the work necessary to clear the defect. In the event that the defect cannot be corrected, resulting in no spare facilities, or if Verizon has indicated that there are spare facilities and Verizon subsequently finds that there are no spare facilities, Verizon will not build new facilities to complete the service request.

Finally, wholesale customers of Verizon, like its retail customers, may request Verizon to provide DS1 and DS3 services pursuant to the applicable state or federal tariffs. While these tariffs also state that Verizon is not obligated to provide service where facilities are not available, Verizon generally will undertake to construct the facilities required to provide service at tariffed rates (including any applicable special construction rates) if the required work is consistent with Verizon's current design practices and construction program. Even in these cases, of course, Verizon must retain the right to manage its construction program on a dynamic basis as necessary to meet both its service obligations and its obligation to manage the business in a fiscally prudent manner.

In summary, although Verizon's policies regarding the construction of new DS1 and DS3 Unbundled Network Elements remain unchanged, Verizon continues to strive to meet the requirements of its wholesale customers for unbundled DS1 and DS3 facilities in a manner that is consistent with the sound management of its business.

If you have any questions regarding Verizon's unbundled DS1/DS3 building practice, you may contact your Account Manager.